TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD ("BOARD")	§	**BEFORE THE TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD**
V.	§	
RUSSELL D. EASTON TX-1324214-R	§	**DOCKET NO. 329-12-2908.ALC**

FINAL ORDER

On this 18th day of May, 2012, the Board considered the above-styled case.

After proper notice was given, the above-styled case was heard by an Administrative Law Judge at the State Office of Administrative Hearings who made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law. This Proposal for Decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. No exceptions or replies were filed to the Proposal for Decision.

The Board, after review and due consideration of the Proposal for Decision, attached as Exhibit A hereto, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge contained in the Proposal for Decision and incorporates those Findings of Fact and Conclusions of Law into this Final Order as if such were fully set out and separately stated in this Final Order. All proposed Findings of Fact and Conclusions of Law submitted by any party that are not specifically adopted in this Final Order are denied.

IT IS THEREFORE ORDERED by the Texas Appraiser Licensing and Certification Board that the certification of Russell D. Easton is hereby ***SUSPENDED***, effective twenty days after the date Russell D. Easton is notified of this Final Order until January 31, 2013.

IT IS FURTHER ORDERED that Russell D. Easton is assessed an administrative penalty of $1,500.

IT IS FURTHER ORDERED that Russell D. Easton complete one 4 hour day of mentorship with a Board approved mentor each calendar quarter for the next seven quarters and submit a completed mentorship affidavit to the Board following completion of each mentorship session.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this Final Order shall then become effective upon a final determination by said court or appellate court in favor of the Board.

Approved by the Board and signed this 18 day of May, 2012.

Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

April 23, 2012

INTER-AGENCY

Douglas E. Oldmixon
Administrator
Texas Appraiser Licensing and Certification Board
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

RE: Docket No. 329-12-2908.ALC; Texas Appraiser Licensing and Certification Board v. Russell Don Easton

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Henry D. Card
Administrative Law Judge

HDC/lh
Enclosure
xc: Chad Norcross, Norcross Law, 10830 N. Central Expressway, Suite 105, Dallas, TX 75231 - **VIA REGULAR MAIL**
Troy Beaulieu, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 – (with 1 hearing CD and Certified Evidentiary Record) **VIA-INTER-AGENCY**

300 W. 15th Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025
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SOAH DOCKET NO. 329-12-2908.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	**OF**
V.	§	
	§	
RUSSELL D. EASTON,	§	
TX-1324214-R,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The Staff of the Texas Appraiser Licensing and Certification Board (Staff/Board) brought action against Russell D. Easton (Respondent) to revoke his real estate appraiser certificate and impose a $5,000 administrative penalty for allegedly violating the Texas Appraiser Licensing and Certification Act, Texas Occupations Code ch. 1103 (the Act), and the Board's rules. Specifically, Staff alleged that Respondent prepared and signed three appraisal reports that were deliberately inflated and failed to conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as required. In the alternative, Staff alleged the appraisal reports were grossly neglectful.

The Administrative Law Judge (ALJ) finds that Respondent deliberately inflated one of the reports and that he was grossly negligent in the preparation of the other two. The ALJ recommends that Respondent's certificate be revoked and that Respondent be assessed an administrative penalty of $4,500, which is the maximum set out under the Board's penalty matrix.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing was convened on February 21, 2012, before ALJ Henry D. Card, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Both parties appeared and were represented by counsel. Staff presented documentary evidence, called Respondent as a witness, and also presented testimony from Respondent's former employer, Ronald Box,[1] and Board investigator Robin Forrester. Respondent also presented some documents and testified on his own behalf. The parties also entered into evidence stipulations regarding jurisdiction and uncontested facts.

The hearing concluded and the record was closed on February 22, 2012.

II. DISCUSSION

A. Background, Parties' Positions, and Legal Standards

Respondent is a state-certified residential real estate appraiser, who holds certificate number TX-1324214-R. This case concerns three appraisal reports prepared by Respondent in late 2006 and early 2007. Staff alleges that Respondent violated the Act, the Board's rules, and the USPAP in appraising three properties: 3517 Dartmouth Avenue, Highland Park, Texas (the Dartmouth property); 725 Lowell Street, Dallas, Texas (the Lowell property); and 405 Rouen Drive, McKinney, Texas (the Rouen property). Staff alleges that Respondent intentionally produced inflated, misrepresentative, unreliable and otherwise deficient real estate appraisal reports as part of a mortgage fraud scheme. Alternatively, Staff alleges that Respondent was grossly negligent in the preparation of these appraisals.

Staff accuses Respondent of violating § 1103.405 of the Act and the Board's rules at 22 Texas Administrative Code (TAC) §§ 153.20(a)(3)(7)(8) and (9), and 155.1(a), in effect at the time of the appraisals.[2] Section 1103.405 of the Act requires all licensees to comply with the most

[1] Because Mr. Box was not familiar with the specific facts of the case, this Proposal for Decision does not discuss his testimony in any detail.

[2] The rules have since been amended, but Respondent' alleged actions would remain violations.

current edition of the USPAP and the standards set out in the Board's rules that are at least as stringent as the USPAP.[3] The pertinent Board rules authorize the Board to suspend or revoke a license if the licensee: (1) fails to comply with the USPAP in effect at the time;[4] (2) has offered to perform appraiser services, or agreed to perform such services, or has accepted payment for appraiser services contingent upon reaching a pre-determined appraisal value,[5] or (3) has made a material misrepresentation or omission of material fact.[6] Staff contends Respondent violated USPAP rules concerning conduct and recordkeeping.[7] The specifics are discussed in the sections of this Proposal regarding each appraised property.

Respondent admits the appraisal reports contain a number of mistakes. He contends the comparables he used were reasonable, however. He denies deliberately inflating any appraisal or being part of any type of mortgage fraud scheme. He further denies that he was grossly negligent in the preparation of the reports.

B. The Evidence

A certified residential real estate appraiser, such as Respondent, is obligated to evaluate the market value of residential property by analyzing various factors that bear upon the value of property. This includes applying the appropriate valuation approach to arrive at an opinion of the property's value. The three accepted approaches to determining the market value are the sales comparison, cost, and income approaches. The sales comparison approach requires locating other similar properties to the property being appraised that have sold within the year. The cost approach involves collecting and analyzing data to determine the value based on the cost to build a property minus depreciation plus the cost of the land. Factors to consider in using this approach include location, gross living area, lot size, and age. The income approach focuses on analyzing the property's income

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[3] Tex. Occ. Code § 1103.405.

[4] 22 TAC § 153.20(a)(3).

[5] 22 TAC § 153.20(a)(7) and (8).

[6] 22 TAC § 153.20(a)(9).

[7] Specific alleged USPAP violations are set out in detail in Staff's Statement of Charges, Staff Ex. 2.

production, such as rental revenue.[8] Respondent employed both the sales and the cost approaches in these three appraisals, although he relied solely on the sales approach in reaching his final determinations of value.

Staff stressed that mortgage lenders rely on an objective appraisal in evaluating whether the collateral is sufficient to justify the loan. If the appraisal misrepresents the market value of the property, the mortgage lender's decision will likewise be flawed.

1. General Contentions

Mr. Forrester, the Board investigator, testified generally that Respondent's appraisals were full of mistakes, omissions, and deliberate misrepresentations. He observed that all the problems in the appraisals led to higher valuations for the properties, which suggested they were deliberate. Mr. Forrester stated that Respondent, using the sales comparison appraisal approach, chose properties to use as comparables that were far more valuable than the subject properties, then made minimal adjustments to those properties to derive his inflated values. Mr. Forrester asserted that better comparables were available. He contended Respondent misrepresented the sales histories of the subject properties to hide or diminish the importance of previous sales and, in two instances, misrepresented the square footage of the subject properties. Mr. Forrester further testified that Respondent also presented the cost appraisal approach on the subject properties; in each case the approach was inadequately explained and the result was overvalued. Mr. Forrester stated that Respondent clearly was trying to reach a predetermined value with his appraisals.

Respondent conceded the reports contained numerous errors and violations of USPAP and, therefore, the Board's rules. He conceded that the cost approach valuations were improperly performed and that he did not have an adequate grasp of the cost approach. He pointed out that he did not rely on the cost approach, but rather on the sales comparison approach, in reaching his final results.

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[8] The income approach is not an issue in this matter.

Respondent did not concede Staff's main points, however. He contended he chose appropriate comparable properties and accurately described the properties' listing histories, square footages, and values at the time of the appraisals. He denied making any deliberate mistakes or being part of any mortgage fraud scheme. He acknowledged that he had suffered from a drug abuse problem around the time of those appraisals, which may have accounted for the mistakes, but stated that he had not taken any bribes or inflated the values of any properties.

2. Specific Properties

a. 3517 Dartmouth

Respondent appraised the Dartmouth property January 17, 2007, with an effective date of January 15, 2007.[9] Respondent appraised the property at $2,700,000. Respondent's report described the property as a 5,711 square-foot single-family residence on a 9,000 square-foot site. Respondent appraised the property for Legacy Lending. Respondent's report noted that the property was under contract for $2,700,000.

Respondent could not locate his work file for the Dartmouth property. He attempted to re-create it, and provided that re-creation to the Board.

i. Staff's Evidence

Mr. Forrester identified numerous problems with Respondent's appraisal of the Dartmouth property. He observed that the absence of a work file was a violation of the USPAP Ethics Rule.[10] He identified minor errors in the property identification and the zoning classification. He pointed to several areas in which the reasons for Respondent's opinions were not fully explained.

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[9] Staff Ex. 5C, Joint Ex. 1.

[10] USPAP page 9, line 314.

Most importantly, Mr. Forrester stated that Respondent had picked comparable sales that would inflate the appraised value of the property. In Mr. Forrester's opinion, those choices were intentionally deceptive and designed to reach a predetermined value. He provided other sales he had identified, which he deemed more properly comparable to the Dartmouth property and showed a lower value. Mr. Forrester also stated that Respondent had misrepresented the property's listing history, misrepresented the value of the lot, and improperly calculated the cost approach to value. Mr. Forrester described those major flaws as part of a scheme to inflate the value of the property for fraudulent purposes. Staff provided an email from Respondent to Renee Allen, acknowledging and thanking her for a $2,000 "bonus" for the Dartmouth property. He identified Ms. Allen as part of a mortgage fraud scheme that was being investigated. Mr. Forrester stated that such a "bonus," which was provided in addition to Respondent's regular payment, was unorthodox and unethical.

Mr. Forrester stated that the Dartmouth property had sold in August of 2006 (approximately four months before the appraisal in question) for $1.4 million.[11] The listing for that sale states that the property had been renovated extensively prior to that sale.[12]

The comparables used by Respondent were also in Highland Park, where the Dartmouth property is located. The sales prices of the homes ranged from $2,550,000 to $3,299,000. The square footage of most of the homes was similar to that of the Dartmouth property. Most of the sites were larger. Respondent made adjustments for the size of the lots and for other characteristics.[13] Mr. Forrester considered the downward adjustments made by respondent to be minimal. He provided a list of other possible comparables, available at that time, which ranged in sales price from $1,545,000 to 1,775,000.[14]

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[11] Both parties agree the property sold on that date. The sale price was not publicly listed, however, and they disagreed as to the price paid. Respondent testified he was told the property sold for $1.8 million.

[12] Staff Ex. 5c, pages 310 and 312.

[13] Staff Ex. 5C, pages 292 and 297.

[14] Staff Ex. 6J, page 452.

Respondent's appraisal report mentioned the August 2006 sale (at $1.8 million). It stated the property was listed most recently at $2.8 million, "after its remodel." Although he acknowledged that the previous sale was mentioned, Mr. Forrester considered the listing history in Respondent's report to be inadequate and deceptive.

Mr. Forrester also took issue with the cost approach set out by Respondent, which produced a value of $2,735,218.[15] Under that approach, Respondent began with a site value of $1.2 million. He calculated the cost of the dwelling at $270 per square foot, ultimately deriving a total improvements value of $1,535,218. Mr. Forrester considered the site value to be greatly overstated—in his opinion, comparable vacant lots were priced between $390,000 and 550,000.[16] Mr. Forrester also calculated the value of the improvements at $150 per square foot, using *Marshall and Swift*, which is a recognized authority on the subject.

ii. Respondent's Evidence

Respondent took exception with several of the accusations made by Staff. He believed that the Dartmouth property had sold in August 2006 for $1.8 million, not $1.4 million as claimed by Mr. Forrester. He agreed that the internal renovations had been made to the property before that sale. However, he testified that after the sale, the exterior of the property was renovated significantly, from brick to stucco with a different elevation, which greatly enhanced its curb appeal and marketability. He stated that his research had showed that stucco houses were very popular in the Highland Park area and worth significantly more. He had concentrated on stucco homes in choosing his comparables.

Respondent admitted he had received the $2,000 "Dartmouth Bonus" from Renee Allen. He testified the extra payment was totally unexpected; hence his email thanking her. He denied the payment was made in exchange for an inflated valuation of the property.

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[15] Staff Ex. 5C, pages 292-93.

[16] Staff Ex. 10Q.

Respondent also took issue with several of the alternative comparables identified by Mr. Forrester. He observed that most of them were not stucco and that two of them[17] were close to major freeways. He pointed out that two of the lots identified by Mr. Forrester were next to the Dallas North Tollway, which would greatly decrease their value relative to the value of the subject site. Respondent did agree, however, that his cost approach was inadequate and inaccurate, in that he had not used a recognized authority to calculate the price per square foot for improvements. He also admitted that he was not as familiar as he should have been with the Highland Park area.

iii. ALJ's Analysis

Respondent correctly pointed out some flaws in Staff's analysis, particularly in Mr. Forrester's reliance on the lots near the Dallas North Tollway. Nevertheless, the preponderance of the evidence showed that Respondent deliberately inflated the value of the Dartmouth property. The ALJ finds it implausible that the change from a brick to a stucco exterior would have increased the value of the property from either $1.8 or 1.4 million to $2.7 million over a period of four months. The value seems particularly inflated when one considers the alternative comparables identified by Mr. Forrester. One of those, at 3209 Princeton, was a Mediterranean-style stucco house, with 5,213 square feet of living space that sold in October of 2006 for $1,545,000.[18] Although he identified some adverse site conditions associated with that home, Respondent agreed that it would have been an acceptable comparable. Despite those site conditions and the fact that it is somewhat smaller than the Dartmouth property, the evidence does not suggest that the price difference between the two would have approached $1.2 million.[19]

If the new stucco exterior and elevation really were Respondent's rationale for the dramatic increase in value, that rationale should have clearly been stated in the appraisal. Instead, the

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[17] Those two properties were 3114 St. John's and 4512 Versailles.

[18] Staff Ex. 9N.

[19] Hearing Recording 3, at approximately 00:52:30.

appraisal speaks generally of the listing price having increased "after its remodel." Moreover, three of Respondent's six comparables were not stucco, but brick.

Finally, the $2,000 "Dartmouth Bonus" from Renee Allen to Respondent implies strongly that Respondent was being paid for inflating the value of the property. Respondent provided evidence that, on other occasions, he had told both Ms. Allen and Jarrod Williams (identified by Mr. Forrester as another participant in the alleged mortgage fraud scheme) that he could not provide reviews in support of appraisals he found inadequate.[20] Respondent also pointed out that neither Ms. Allen, Mr. Williams, nor any of the other people so identified by Mr. Forrester have been indicted, prosecuted, or convicted. Nevertheless, the unexplained bonus check, combined with the appraisal that is so far above the previous recent sale price of the subject property and the sale price of an acknowledged comparable, along with the vague wording of the listing history and the admittedly inadequate cost approach, establish by a preponderance of the evidence that Respondent deliberately inflated the appraised value of the Dartmouth property to reach a predetermined value of $2,700,000.

b. 705 Lowell

Respondent appraised the Lowell property on November 1, 2006, with an effective date of October 28, 2006.[21] Respondent appraised the property at $482,000. The report described the property as a 3,189 square-foot home on an 8,624 square-foot site. Respondent prepared the report for Rahman Ahluwalia, of Legacy Lending Associates. The report stated the property "fronts, backs, and sides to similar residential properties." Respondent did provide his work file for the property.

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[20] Respondent Ex. A, page 259.

[21] Staff Ex. 5F, Joint Ex. 1.

i. Staff's Evidence

As with the Dartmouth property, Mr. Forrester identified several problems with Respondent's appraisal of the Lowell property.[22] Again, he identified a minor error in the zoning classification. Again, he pointed to areas in which the reasons for Respondent's opinions were not fully explained.

Mr. Forrester stated that Respondent had picked comparable sales that would inflate the appraised value of the Lowell property. In Mr. Forrester's opinion, those choices were intentionally deceptive. Mr. Forrester pointed out that even a cursory examination of the photographs showed the comparables to be superior to the subject property. He pointed out that a photograph of the most superior property, at 4929 Swiss Avenue, was not included in the report at all. Instead, one of the other properties was pictured in its place and misidentified as "4929 Swiss Avenue."[23] Mr. Forrester also testified that Respondent had misrepresented the square footage of the Lowell property. According to the Dallas County Appraisal District (DCAD), the square footage of the residence was 2,548 square feet. Mr. Forrester provided a list of alternative comparables, including one across the street, with that approximate square footage, that had sold between January 1 and October 28, 2006. The sales prices for those alternative comparables ranged from $165,000 to $412,000. The house across the street at 724 Lowell, which had 2,262 square feet of living space, was sold in 2006, before Respondent's appraisal of the subject property, for $275,000.[24]

Moreover, Mr. Forrester testified that Respondent mischaracterized the site conditions. On one side of the subject property is an apartment complex, with an alley between the two that is used for trash collection. He observed that the photographs Respondent included in the report do not show the apartment complex or the trash dumpster in the alley. As part of his investigative report, Mr. Forrester provided photographs that clearly show them.[25]

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[22] Staff Ex. 6K.

[23] Staff Ex. 5F, page 345 and Ex. 19.

[24] Staff Ex. 21. The details of those alternative comparables were not placed into evidence, although it was established that the house at 724 Lowell did not have an in-ground pool, while the subject property did.

[25] Staff Ex. 5F, pages 331 and 341, Exs. 12-18.

Respondent also used the cost approach in his report, reaching a value of $491,341. As before, Mr. Forrester found that approach to be unsubstantiated.

Mr. Forrester described those major discrepancies as, again, part of a scheme to inflate the value of the property for fraudulent purposes.

ii. Respondent's Evidence

Respondent agreed that he had not shown or described the apartment complex in his appraisal report and accompanying photographs. In fact, he admitted his report was clearly wrong in that respect. He stated he had taken it into account in choosing his comparables, however, because one of those comparables had a car wash in back of it and another had an apartment complex. He agreed that 4929 Swiss Avenue was not pictured in his report. He explained that the photograph that was purported to be of 4929 Swiss was of one of the other comparables and that he had just gotten the photos out of place.

Respondent took issue with Mr. Forrester's description of the living area of the Lowell property. He said he had measured the property himself and that the square footage listed by DCAD was wrong, because it did not account for finished space upstairs. Therefore, in Respondent's opinion, his comparables were preferable to the smaller comparables, including 724 Lowell, identified by Mr. Forrester.

In response to Respondent's testimony, Mr. Forrester stated he had driven by the comparables chosen by Respondent and had not seen the car wash and apartment house he had mentioned. In any event, the apartment house and alley should have been identified and discussed in the appraisal report. He also stated that Respondent's sketch of the upstairs of the Lowell property lacked several dimensions and that it appeared to be inconsistent with the dimensions of the house.

iii. ALJ's Analysis

The ALJ finds that the Board failed to prove that Respondent miscalculated or misrepresented the square footage of the Lowell property. It is plausible that the square footage shown in the DCAD records is inaccurate. Mr. Forrester's insistence that the square footage shown on the appraisal report was wrong was not convincing in the face of Respondent's testimony that he measured the property personally and remembered the DCAD square footage being wrong. Therefore, the comparables identified by Mr. Forrester are not necessarily more appropriate than the ones used by Respondent.

Staff also failed to refute Respondent's argument that two of the comparables Respondent used had adverse site conditions similar to the apartment complex next to the Lowell property. Although Mr. Forrester drove by and photographed those properties, he did not testify that he looked in back of them, where respondent said the car wash and apartment complex were located.

Nevertheless, the ALJ agrees with Staff that Respondent was grossly negligent in his appraisal report for the Lowell property. The photographs do not show, and the text does not mention, the apartment complex, alley and dumpster next door to the subject property. In fact, the report states that the subject property has similar residences on all side. The report does not mention that two of the comparables had negative site features. Downward adjustments should have been, but were not, made to the remaining comparables to reflect that no adverse site condition were present. In addition, the 4929 Swiss property stands out as obviously inappropriate. The photograph alone, which did not appear in the report, shows it to be significantly superior to the Lowell property. It included a separate garage apartment, which Respondent admitted could be an income-producing feature. Respondent's total net adjustment from the actual sales price of the Swiss property was a negative $248,400, but the adjusted sales price was still $526,000. Finally, Respondent admitted that he did not perform the cost approach correctly.

Considering those errors in the report, it is possible that Respondent deliberately inflated the value of the Lowell property as Staff alleges. The evidence does not prove that allegation, however,

given that Staff did not prove that the reported square footage was wrong or that the Staff's proposed comparables were preferable. The evidence does show, however, that Respondent was grossly negligent in his preparation of the report, as Staff alleges in the alternative. Respondent's failure to mention or show the adverse site conditions and his statement that the property was surrounded by similar residential properties, combined with his failure to include a correct photograph of the Swiss property, would preclude a lender from receiving an accurate understanding of the subject property and its value.

c. 405 Rouen

Respondent appraised the Rouen property on December 27, 2006, with an effective date of December 16, 2006.[26] Respondent appraised the property at $995,000. The report described the property as a 6,935 square-foot home, including a finished sub-level, on a site in excess of 25,000 square feet. The report was prepared for Jarrod Williams, who was the owner of the property at the time. Respondent did provide his work file for the property.

i. Staff's Evidence

As with the other two properties, Mr. Forrester identified several problems with Respondent's appraisal of the Rouen property.[27] Again, he identified a minor error in the zoning classification. Again, he pointed to areas in which the reasons for Respondent's opinions were not fully explained. He observed that Respondent's cost approach valuation was not properly explained or calculated.

Mr. Forrester expressed three primary concerns with Respondent's appraisal of the Rouen property. First, he testified that Respondent had vastly overstated the square footage of the home by including the basement in that figure. Mr. Forrester pointed to Federal National Mortgage

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[26] Staff Ex. 5I, Joint Ex. 1.

[27] Staff Ex. 6L.

Association (Fannie Mae) guidelines that prohibit the inclusion of garages and basements in the calculation of gross living area, even if they are partially above-grade.[28] Mr. Forrester testified that the property should have been reported as a 4,213 square-foot house with a 2,722 square-foot basement, with all comparable sales adjusted accordingly.[29]

Second, Mr. Forrester testified that Respondent went outside the property's immediate subdivision, Mallard Lakes, for his comparables. Respondent's comparables were predominantly in the King's Lake, Bluffs of Winding Creek, and Chancellor Creek subdivisions. Mr. Forrester provided multiple listing service (MLS) data to show that the average and maximum sales prices in each of those subdivisions were far above those of Mallard Lakes:

Neighborhood [30]	Min. Sale Price	Ave. Sale Price	Max. Sale Price
Mallard Lakes	$340,000	$397,195	$665,000
Kings Lake	$780,000	$1,079,725	$1,395,000
Bluffs of Winding Creek	$445,000	$662,798	$1,290,000
Chancellor Creek	$274,900	$523,977	$1,165,000

Mr. Forrester provided an alternative list of comparable properties, of approximately 3,200-4,500 square feet, in the Mallard Lakes subdivision, with sales prices between $340,000 and $438,000. He also provided information showing that the home at 501 Rouen, just two houses away from the subject property, had sold in August of 2005 for $625,000.[31]

Finally, Mr. Forrester testified that Respondent had misrepresented the listing history for the Rouen property by stating it had sold in March of 2006 for $665,000 as a foreclosure. Mr. Forrester stated that sale was not a foreclosure. Mr. Forrester stated he had spoken with the listing broker on that sale, who told him that it was an arms-length transaction and that the sellers had been happy to

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[28] Staff Ex. 33.

[29] Staff Ex. 6L, page 503.

[30] Staff Exs 29, 30. One of Respondent's comparables was a listing, not a sale, in the Mallard Lakes area. Another comparable sale used by Respondent was in "The Reserve." Mr. Forrester provided sales data for "Stonebridge," but not for "The Reserve." The ALJ has not included that information, because it is unclear whether those were the same area.

[31] Staff Exs. 31, 32NN.

get that price. Mr. Forrester also stated that the broker was "incredulous" at Respondent's appraisal of the subject property.[32]

The listing history in the appraisal report also states that the house was listed later in 2006 for $942,000, the price was quickly reduced to $850,000, and, after 45 days, the listing was cancelled. The property then was purchased in June of 2006 for $960,000 by the current owner. That part of the history corresponds with the information supplied by Staff.[33]

ii. Respondent's Evidence

Respondent testified that Mr. Forrester was wrong about the square footage of the Rouen home. He stated that the basement, which had an external entrance, was finished to the same grade as the rest of the home and, therefore, properly was included in the gross living area. He pointed out, correctly, that his report mentioned several times that the sub-level was included in the calculated gross living area of the home; that fact was not concealed in any way.

Respondent stated that he used comparables from outside the Mallard Lakes subdivision because the Rouen property was in a gated area, with its back yard on a wooded lake. Therefore, because the Rouen property was superior to other Mallard Lake properties, he used properties in other higher-end communities. He did not use the sale of the neighboring property at 501 Rouen, because that sale was more than a year old, which was contrary to general lender guidelines. Moreover, the basement was unfinished at the 501 Rouen property.[34] Respondent testified that the homeowner at 501 Rouen had told him, just before the hearing in this case, that the property had been appraised at $915,000 in July of 2008, after its basement had been finished to the standard of the rest of the living area.[35]

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[32] The ALJ includes that testimony for the Board's information. However, the listing broker did not testify and was not subject to cross-examination. The ALJ has not given any weight to that particular hearsay comment.

[33] Staff Ex. 5I, page 397, and Ex. 24.

[34] Staff Ex. 32NN.

[35] Respondent offered that later appraisal into evidence at the hearing. Staff's hearsay objection to that offer

Respondent testified that the homeowner of the subject property, presumably Mr. Williams, had told him the previous sale was a real-estate-owned, or REO sale, which he equated to a foreclosure.[36] He stated that the related MLS listing looked like an REO sale because it contained only minimal information. On examination, however, he agreed that the MLS listing for that sale showed the seller type as "Owner." If it were an REO sale, the listing would have so stated.[37]

iii. ALJ's Analysis

The ALJ finds that Staff failed to prove that Respondent overstated the gross living area of the Rouen property. Respondent testified that the sub-level of the house was finished to the same quality as the rest of the dwelling. Although Mr. Forrester did not believe that to be the case, Staff provided no credible evidence contradicting Respondent's claim. In fact, Respondent's claim is borne out by one of the MLS listings for the property.[38] The appraisal also explicitly states that the finished sub-level is being considered as part of the gross living area. For that reason, and because the Rouen property is in a gated area with a small lake, Staff's lower-square-footage alternative comparables do not necessarily reflect the value of the Rouen property.

Respondent's appraisal report is seriously flawed in several respects, however. First, it reports the previous $665,000 sale as a foreclosure. Mr. Forrester's testimony and the MLS listing establish that it was not either a foreclosure or an REO sale. Even if the homeowner told Respondent differently, examination of the MLS listing should have prompted Respondent to investigate the matter further.

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was sustained. However, Respondent later testified, without objection, concerning the amount of that that appraisal. Because the appraisal itself is not in evidence and neither the homeowner nor the appraiser testified at the hearing, the ALJ has not given weight to that testimony. Again, though, he presents it so the Board may consider it if it so desires.

[36] Although there is a distinction between an actual foreclosure and an REO sale, both Respondent and Respondent's former employer, Mr. Box, stated they did not consider that distinction to be an important one.

[37] Staff Ex. 5I, page 410; Hearing Recording 1 at approximately 2:47:00.

[38] Staff Ex. 5I, p. 411.

Second, although the appraisal report acknowledges that Respondent went outside the Mallard Lakes subdivision to find his comparables, it does not analyze the differences between those neighborhoods and Mallard Lakes in any substantive way. Mr. Forrester's data show that the other neighborhoods were generally far more expensive than Mallard Lakes. If the Rouen property was hundreds of thousands of dollars more valuable than any other properties in its subdivision, that difference should have been clearly and fully discussed. The report states that the subject property represented the upper end of home value for the market. It does not explain, however, that the appraised value is very far above that of other homes in the subdivision or that the comparables are located in subdivisions with far greater average home values. Without that information, the Rouen appraisal report did not provide the lender a complete and accurate picture of the value and marketability of the home.

Because Staff did not prove that the square footage was overstated, and because Respondent did show significant differences between the Rouen property and other properties in Mallard Lakes, the ALJ finds Staff did not prove Respondent deliberately inflated the value of the Rouen property. The ALJ finds, however, that Respondent's appraisal report was grossly negligent, because it inaccurately stated that the previous sale for $665,000 was a foreclosure, did not discuss the huge variance in value between the subject home and the rest of the neighborhood, did not address adequately the differences between the subject neighborhood and the neighborhoods of the comparables, and included a cost approach without Respondent having adequate familiarity with that appraisal technique.

3. Sanctions

The Board's penalty matrix, which is incorporated into 22 Texas Administrative Code § 153.24(9), establishes the parameters of sanction imposed for violations of the Act, rules, or USPAP that, individually or collectively, were done willfully or in a grossly negligent manner. The matrix recommends suspension or revocation for a first occurrence of such violations, along with an administrative penalty of $500 to $1,500 per violation. Staff recommended revocation of Respondent's certificate, plus an administrative penalty of $5,000.

Respondent pointed out that he has been an appraiser for 22 years and has never before had a complaint filed against him. Although he agreed there were errors in the appraisals at issue, he denied that he deliberately inflated any values or committed gross negligence in any of the appraisals. Respondent asked that sanctions be limited to a fine, additional training, mentoring, and audits.

Staff did not prove all its primary allegations against Respondent. The preponderance of the evidence does show, however, that Respondent deliberately inflated the value of the Dartmouth property to reach a predetermined value and that he was grossly negligent in his preparation of the reports on the Lowell and Rouen properties. Primarily because of the Dartmouth property report, but considering the other reports as well, the ALJ recommends that Respondent's certificate be revoked as proposed by Staff. Although Staff recommended a $5,000 penalty, the matrix sets $4,500 as the maximum for these three violations. The ALJ recommends that Respondent be assessed an administrative penalty of $4,500.

III. FINDINGS OF FACT

1. Russell Don Easton (Respondent) is a state-certified residential real estate appraiser who holds certificate number TX-1324214-R issued by the Texas Appraiser Licensing and Certification Board (Board).

2. The Board's Staff (Staff) brought action against Respondent to revoke his real estate appraiser certificate and impose administrative penalties for allegedly violating the Texas Appraiser Licensing and Certification Act (the Act), Texas Occupations Code chapter 1103, and the Board's rules.

3. Staff alleged that Respondent violated the Act, the Board's rules, and the Uniform Standards of Professional Appraisal Practice (USPAP) in late 2006 and early 2007 in appraising three properties: 3517 Dartmouth Avenue, Highland Park, Texas (the Dartmouth property); 725 Lowell Street, Dallas, Texas (the Lowell property); and 405 Rouen Drive, McKinney, Texas (the Rouen property).

4. The Board sent notice of the hearing to Respondent on November 29, 2011.

5. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the

particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

6. The hearing was convened on February 21, 2012, before Administrative Law Judge Henry D. Card, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Both parties appeared and were represented by counsel. The hearing concluded and the record was closed on February 22, 2012.

7. A certified residential real estate appraiser is obligated to evaluate the market value of residential property by analyzing various factors that bear upon the value of property. This includes applying the appropriate valuation approach to arrive at an opinion of the property's value.

8. The three accepted approaches to determining the market value are the sales comparison, cost, and income approaches. The sales comparison approach requires locating other similar properties to the property being appraised that have sold within the year. The cost approach involves collecting and analyzing data to determine the value based on the cost to build a property minus depreciation plus the cost of the land. Factors to consider include location, gross living area, lot size, and age. The income approach is not applicable to this case.

9. Respondent employed both the sales comparison and cost approaches in these three appraisals, although he relied solely on the sales approach in reaching his final determinations of value.

10. Respondent admitted he did not have a firm grasp on the cost approach.

11. Mortgage lenders rely on an objective appraisal in evaluating whether the collateral is sufficient to justify the loan.

3517 Dartmouth

12. Respondent appraised the Dartmouth property January 17, 2007, with an effective date of January 15, 2007.

13. Respondent appraised the Dartmouth property at $2,700,000. Respondent's report described the property as a 5,711 square-foot single-family residence on a 9,000 square-foot site.

14. The report observed that the property was under contract for $2,700,000.

15. Respondent appraised the property for Legacy Lending.

16. Respondent could not locate his work file for the Dartmouth property. He attempted to re-create it, and provided that re-creation to the Board.

17. Respondent received a $2,000 check from Renee Allen for his work on the Dartmouth property, in addition to his regular payment.

18. The Dartmouth property sold in August of 2006 (approximately four months before the appraisal in question) for either $1.8 million or $1.4 million.

19. The Dartmouth property had been renovated extensively prior to the August 2006 sale.

20. The comparable properties used by Respondent for the sales comparison approach for the Dartmouth property were also in the Highland Park area. The sales prices of the homes used as comparables ranged from $2,550,000 to $3,299,000. The square footage of most of the homes was similar to that of the Dartmouth property. Most of the sites were larger. Respondent made adjustments for the size of the lots and for other characteristics.

21. Respondent's appraisal report for the Dartmouth property mentioned the August 2006 sale (at $1.8 million). It stated the property was listed most recently at $2.8 million, "after its remodel."

22. After the August 2006 sale, the exterior of the Dartmouth property was renovated, from brick to stucco with a different elevation.

23. Under his cost approach for the Dartmouth property, Respondent began with a site value of $1.2 million. He calculated the cost of the dwelling at $270 per square foot, ultimately deriving a total improvements value of $1,535,218.

24. Respondent did not use a recognized authority to calculate the price per square foot for improvements in his cost approach for the Dartmouth property.

25. It is implausible that the change from a brick to a stucco exterior would have increased the value of the property from either $1.8 or 1.4 million to $2.7 million over a period of four months.

26. One of the alternative comparables identified by Staff investigator Robin Forrester, 3209 Princeton, was a Mediterranean-style stucco house, with 5,213 square feet of living space that sold in October of 2006 for $1,545,000.

27. Although he identified some adverse site conditions associated with 3209 Princeton, Respondent agreed that it would have been an acceptable comparable to the Dartmouth property.

28. Despite the adverse site conditions and the fact that it is somewhat smaller than the Dartmouth property, the price difference between3209 Princeton and the Dartmouth property would not have approached $1.2 million.

29. If the new stucco exterior and elevation were truly Respondent's rationale for the dramatic increase in the Dartmouth property's value, that rationale should have clearly been stated in the appraisal report.

30. Respondent's appraisal report did not clearly state that the new stucco exterior and elevation were the reasons for the increase in value of the Dartmouth property.

31. Three of Respondent's six comparables were not stucco, but brick.

32. Payment of a "bonus," such as the $2,000 check from Renee Allen to Respondent, is very unusual.

33. The unexplained bonus check, combined with the appraisal that is so far above the previous recent sale price of the subject property and the sale price of an acknowledged comparable, along with the vague wording of the listing history and the admittedly inadequate cost approach, establish that Respondent deliberately inflated the appraised value of the Dartmouth property to reach a predetermined value.

705 Lowell

34. Respondent appraised the Lowell property on November 1, 2006, with an effective date of October 28, 2006.

35. Respondent appraised the Lowell property at $482,000.

36. The appraisal report described the property as a 3,189 square-foot home on an 8,624 square-foot site.

37. Respondent prepared the report for Rahman Ahluwalia, of Legacy Lending Associates.

38. The appraisal report stated the property "fronts, backs, and sides to similar residential properties."

39. Respondent did provide his work file for the Lowell property.

40. According to the Dallas County Appraisal District (DCAD) the square footage of the Lowell residence was 2,548 square feet

41. On one side of the subject property is an apartment complex, with an alley between the two that is used for trash collection.

42. The photographs Respondent included in his report do not show the apartment complex or the trash dumpster in the alley.

43. The cost approach used by Respondent was unsubstantiated.

44. Respondent measured the Lowell residence.

45. Respondent did not miscalculate or misrepresent the square footage of the Lowell property.

46. One of Respondent's comparables had a car wash in back of it and another had an apartment complex.

47. The appraisal report did not mention that two of the comparables had negative site features.

48. Downward adjustments were not made to the remaining comparables in the report to reflect that no adverse site conditions were present.

49. The property at 4929 Swiss was obviously inappropriate as a comparable to the Lowell property, but was nevertheless used by Respondent in his appraisal report.

50. The property at 4929 Swiss included a separate garage apartment, which Respondent admitted could be an income-producing feature. Respondent's total net adjustment from the actual sales price of the property was a negative $248,400, but the adjusted sales price was still $526,000.

51. The evidence does not prove that Respondent deliberately inflated the value of the Lowell property, because Staff did not show that the reported square footage was wrong or that the Staff's proposed comparables were preferable.

52. Respondent's failure to mention or show the adverse site conditions at the Lowell property and his statement that the property was surrounded by similar residential properties, combined with the failure to include a correct photograph of the Swiss property, would preclude a lender from receiving an accurate understanding of the subject property and its value.

53. Respondent was grossly negligent in his preparation of the appraisal report on the Lowell property.

405 Rouen

54. Respondent appraised the Rouen property on December 27, 2006, with an effective date of December 16, 2006.

55. Respondent appraised the Rouen property at $995,000.

56. The appraisal report described the property as a 6,935 square-foot home, including a finished sub-level, on a site in excess of 25,000 square feet.

57. The report was prepared for Jarrod Williams, who was the owner of the property at the time.

58. Respondent provided his work file for the Rouen property.

59. Respondent's cost approach for the Rouen property was not properly explained or calculated.

60. The Rouen property was in a gated area, with its back yard on a wooded lake.

61. Respondent went outside the property's immediate subdivision, Mallard Lakes, for his comparables. Respondent's comparables were predominantly in the King's Lake, Bluffs of Winding Creek, and Chancellor Creek subdivisions.

62. The average and maximum sales prices in the comparables' subdivisions were far above those of Mallard Lakes:

Neighborhood	Min. Sale Price	Ave. Sale Price	Max. Sale Price
Mallard Lakes	$340,000	$397,195	$665,000
Kings Lake	$780,000	$1,079,725	$1,395,000
Bluffs of Winding Creek	$445,000	$662,798	$1,290,000
Chancellor Creek	$274,900	$523,977	$1,165,000

63. The sub-level of the Rouen house was finished to the same quality as the rest of the dwelling.

64. Respondent's appraisal explicitly states that the finished sub-level is being considered as part of the gross living area.

65. Respondent did not overstate the gross living area of the Rouen property.

66. Respondent misrepresented the listing history for the Rouen property by stating it had sold in March of 2006 for $665,000 as a foreclosure.

67. The multiple listing service (MLS) listing for the March 2006 sale showed the seller type as "Owner," indicating that it was not a foreclosure or a real-estate-owned (REO) sale.

68. The March 2006 sale of the Rouen property was not a foreclosure or an REO sale.

69. Even if the homeowner told Respondent differently, examination of the MLS listing should have prompted Respondent to investigate whether the March 2006 sales was a foreclosure or REO sale.

70. Although the appraisal report acknowledges that Respondent went outside the Mallard Lakes subdivision to find his comparables, it does not analyze in any substantive way the differences between Mallard Lakes and the neighborhoods of those comparables.

71. If the Rouen property was hundreds of thousands of dollars more valuable than any other properties in its subdivision, that difference should have been clearly and fully discussed.

72. The appraisal report does not explain that the appraised value is very far above that of other homes in the subdivision or that the comparables are located in subdivisions with far greater average home values.

73. The Rouen appraisal report did not provide the lender a complete and accurate assessment of the value and marketability of the home.

74. The preponderance of the evidence did not establish that Respondent deliberately inflated the value of the Rouen property.

75. Respondent's appraisal report was grossly negligent, because it inaccurately stated that the previous sale for $665,000 was a foreclosure, did not discuss the huge variance in value between the subject home and the rest of the neighborhood, did not address adequately the differences between the subject neighborhood and the neighborhoods of the comparables, and included a cost approach without Respondent having adequate familiarity with that appraisal technique.

Sanctions

76. Staff seeks revocation of Respondent's certificate and an administrative penalty of $5,000.

77. Respondent has been an appraiser for 22 years and has never before had a complaint filed against him.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, Texas Occupations Code chapter 1103 (the Act).

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code chapter 2003.

3. Proper and timely notice was provided to Respondent pursuant to the Administrative Procedure Act, Texas Government Code chapter 2001.

4. Staff has the burden of proof, pursuant to 1 Texas Administrative Code § 155.427.

5. Respondent was required under Texas Occupations Code § 1103.405 and 22 TAC §§ 153.20(a)(3) and 155.1 to comply with the USPAP in effect at the time Respondent prepared each of the appraisal reports.

6. Based on the above Findings of Fact and Conclusions of Law, Respondent violated Texas Occupations Code § 1103.405 and 22 TAC §§ 153.20(a)(3)(7)(8) and (9) and 155.1(a) in effect at the time of the appraisal reports at issue.

7. The Board may suspend or revoke a certificate if the certificate holder violates either the Act or, a Board rule, or fails to comply with USPAP in effect at the time of the appraisal, pursuant to TEX. OCC. CODE § 1103.518 and 22 TEX. ADMIN. CODE § 153.20.

8. The Board's penalty matrix, which is incorporated into 22 Texas Administrative Code § 153.24(9), establishes the parameters for sanction to be imposed for violations of the Act, rules, or USPAP.

9. The Board's penalty matrix recommends suspension or revocation for a first occurrence of violations such as those committed by Respondent, along with an administrative penalty of $500 to $1,500 per violation.

10. The Board has the authority and cause to revoke Respondent's certificate and assess an administrative penalty of $4,500 against him.

SIGNED April 23, 2012.

HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS